No. 14073

In the United States Court of Appeals for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

R. H. OSBRINK, M. E. OSBRINK, AND BERTON W. BEALS AS TRUSTEE, COPARTNERS, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF R. H. OSBRINK MANUFACTURING COMPANY, RESPONDENTS

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

GEORGE J. BOTT,
General Counsel,
DAVID P. FINDLING,
Associate General Counsel,
A. NORMAN SOMERS,
Assistant General Counsel,
ARNOLD ORDMAN,
MARGARET M. FARMER,
Attorneys,
National Labor Relations Board.

INDEX

AUTHORITIES CITED

Cases:

In the United States Court of Appeals for the Ninth Circuit

No. 14073

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

R. H. OSBRINK, M. E. OSBRINK, AND BERTON W. BEALS AS TRUSTEE, COPARTNERS, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF R. H. OSBRINK MANUFACTURING COMPANY, RESPONDENTS

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

JURISDICTION

This case is before the Court upon petition of the National Labor Relations Board for enforcement of its order and supplemental order (R. 80–84, 104–105) issued against respondents on April 13, 1953, and July 7, 1953, respectively pursuant to Section 10 (e) of the National Labor Relations Board, as amended (61 Stat. 136, 29 U. S. C. Supp. V, Section 151, *et seq.*)[1] This Court has jurisdiction under Section 10 (e) of the Act because the unfair labor practices in question

[1] The pertinent provisions of the Act are set out in the Appendix, *infra*, pp. 39–41. The order of the Board is printed in 104 N. L. R. B. No. 1.

occurred at Los Angeles, California, within this judicial circuit.[2]

I. Statement of facts

Following the customary proceedings under Section 10 of the Act, the Board found (R. 76–77, 47, 55), in agreement with the Trial Examiner, that respondents had discharged 2 employees because of their activity in behalf of the Union[3] in violation of Section 8 (a) (3) and (1) of the Act, and had restrained, coerced, and interfered with their employees in violation of Section 8 (a) (1) of the Act by certain statements made to the employees by R. H. Osbrink, a copartner and by two of respondents' supervisory employees.[4]

[2] Respondents are a copartnership engaged in the manufacture of aluminum and magnesium castings. The copartnership maintains its principal place of business at Los Angeles, California. During the 12-month period preceding issuance of the complaint, it caused products manufactured by it of a value in excess of $25,000 to be sold and transported from its place of business in Los Angeles to points outside the State of California (R. 15). Respondents concede that they are subject to the jurisdiction of the Board (R. 16, 19).

[3] International Union, United, Automobile Aircraft & Agricultural Implement Workers of America, CIO.

[4] After the issuance of the Board's decision and order, respondents filed a "Motion for Reconsideration, Motion for Rehearing and Motion to Dismiss" (R. 85) before the Board, alleging, *inter alia*, *that* the Board proceedings were invalid (1) because the charges which initiated the proceeding had been filed by UAW–CIO, Region 6, and that said Region 6 was not in compliance with the filing requirements of Section 9 (f), (g), and (h) of the Act; and (2) because certain allegations in the complaint, not specifically adverted to in the charges, were barred by the 6-month limitations provision of Section 10 (b). The Board, in a Supplemental Decision and Order (R. 100), denied respondents' motions, holding (1) that Region 6 was not a separate labor organi-

The instant case was consolidated for the purpose of hearing with a hearing ordered by the Board upon Objections filed by the Union to the conduct of respondents in connection with an election held by the Board among respondents' employees on January 25, 1952. The Board, in agreement with the Trial Examiner, found that respondents' conduct preceding the election had failed to meet the standards required by the Board and adopted the recommendations of the Trial Examiner that the election be set aside (R. 76).

The facts upon which the Board predicated these conclusionary findings are summarized below:

A. The Union's organizational campaign and respondents' successful attempts to cause the Union's defeat in the election

The Union began an organizational campaign in respondent's plant in the fall of 1951 and in December of that year petitioned the Board to conduct an election to determine the bargaining representative for respondents' employees (R. 26; 194, 257, 261, 280). On January 2, 1952, the Board directed that an election be held among respondents' production and maintenance employees on January 25, 1952.

Pending the election, respondents took various steps to discourage union activity and to encourage the Union's defeat in the election. On January 15, re-

---

zation but merely an administrative arm or subdivision of the UAW-CIO, and hence not required to comply with Section 9 (f), (g), and (h); and (2) that the allegations in questions were properly included in the complaint. In order to avoid any further ambiguity on the compliance issue, the Board amended its original decision and order to delete the words "Region 6" wherever they appeared therein. These matters will be discussed further below (pp. 28–38).

spondents discharged employee John LeFlore, Jr., the most active proponent of the Union in the plant, under circumstances which will be discussed more fully below. About a week before the election, Derry Smith, whom the Board found to be a supervisory employee in charge of the shake-out department (R. 34–36, 76), called a shake-out crew away from their work, bade them gather around him, and informed them that respondent R. H. Osbrink had told him that the plant would be closed if the Union won the election (R. 35; 224–225, 227–228, 243–244, 252, 265–266). Shortly thereafter, Smith warned Goynes, an employee working under his direction, that Osbrink would take away certain privileges then enjoyed by the employees if the Union won the election (R. 36; 244). After LeFlore's discharge on January 15, both Smith and Watkins, who was an assistant to foundry superintendent Rasp (R. 459, 285), told employees that LeFlore had been discharged because of his union activity (R. 45–46; 240–241, 251). Smith also told Goynes that Goynes, too, had been slated for discharge because of his union activity and intimated that Goynes had been saved only because Smith had intervened in his behalf (R. 241, 251). Smith also told a group gathered at LeFlore's home that LeFlore would never be rehired because he had been seen passing out Union pamphlets (R. 46; 293–294).

On the afternoon of January 24, 1952, the day before the election, Osbrink assembled the employees during working hours and spoke to them concerning the coming election (R. 27–28; 141–158). Most of his remarks were addressed to the history of the plant and to the

opportunities for training and advancement which were open to his employees. He stated that his success had been achieved by open shop methods, and that he did not need and did not want the Union (R. 29; 160, 143–144). He stated that he had started the business in the midst of the depression and that if the Union had been interested in the employees, they should have been in the plant at that time. He also expressed the opinion that the Union was now interested because of the money it could get every month from respondents' 250 employees. He then told the employees that if they "wanted to spend money for guidance in [their] personal affairs," he was more qualified to guide them than anybody else; and that if they "wanted to spend money on that," he would match dollar for dollar and they could establish a fund for entertainments and picnics and so forth. Finally, Osbrink suggested that the employees could "use the money to a better advantage than having an outsider come in and handle your affairs" specifying that it was "not necessary to get outside help" (R. 29; 144–146, 163). Osbrink then introduced Chuck O'Day, a production man in the plant and a representative of management, who spoke of the disadvantages of union membership and the advantages of working for respondents (R. 51; 146–151). After O'Day had finished speaking Osbrink spoke again, urging the employees to vote against the Union and again offered to match dollar for dollar in a fund established by the employees, stating "that's more to the point, fellows, than paying union dues," and suggesting that "rather

than trying to get someone outside we can form our own little group gathering and take care of our own problems" (R. 29; 151–154, 157). In the course of these remarks, Osbrink added the parenthetical observation, greeted by laughter from the employees, that his attorney had instructed him to be sure to tell the employees that his offer "goes whether the union gets in or not" (R. 29; 157).

The following day the employees voted against union representation by 160 to 100 (R. 26).

B. The Discharges

John LeFlore

John LeFlore, Jr., was employed by respondents in September 1951 as a furnace attendant (R. 39; 270–271). After he had spent approximately 6 weeks on this job, where he worked under the supervision of the journeyman furnace attendant Mose Harris,[5] LeFlore requested and obtained a transfer to the shake-out department, where he worked until January 15, 1952, when he was discharged (R. 39; 272, 297–298). During this period, Derry Smith, his im-

[5] Mose Harris, under whom LeFlore worked, and Detroit Rushing, under whom Plummer worked (see *infra*, p. 12), occupied positions analogous to leadmen and were so called by respondents' employees (R. 311–312, 207, 234, 257, 272). Respondents objected to the term "leadmen" however, and preferred to call them "journeymen," a term which Osbrink testified was used to describe "the best man for a particular job" (R. 33; 166). They were each in charge of several banks of furnaces and, as the oldest men on the job, directed the work of the several furnace attendants who worked with them (R. 33; 132–133, 135–138). They were not of supervisory status and voted with other employees in the election (R. 33–34).

mediate superior,[6] assigned to LeFlore 2 new men, one of whom was Smith's own brother, to break in on the job, telling them that LeFlore was a good worker and could direct them (R. 43; 288, 409–410). Smith told LeFlore during this period, according to LeFlore, whom the Trial Examiner and the Board credited, that if all the employees in the department were as efficient as LeFlore, that Smith would have nothing to worry about (R. 43; 287).

LeFlore was the most vigorous and active advocate for the Union in the plant (R. 44; 197, 240, 262, 282–283, 301–302, 304–305). A few hours after he started work for respondents he asked Mose Harris if the plant was organized (R. 44; 276–277). When he was told that respondents did not like unions, and that the plant was not organized, he promptly announced that he thought unions benefited the employees and believed that every shop should be unionized (*ibid.*) When the Union began an organizing campaign in the fall of 1951, LeFlore became its chief proponent in the plant, wore a union button for several days (R. 282–283, 309–310), and actively assisted the Union by vigorously discussing its merits with all the employees with whom he came into contact, including his superior Smith, who was opposed to it (R. 45; 277–283, 301–302, 316–319), and secured the names and addresses of all who were willing

[6] Derry Smith was in charge of the shake-out department, which numbered between 20 and 30 employees who worked in crews in various locations throughout the foundry (R. 34; 273–275, 298–299). The Board adopted the finding of the Trial Examiner that he was of supervisory status.

for him to furnish it with this information (R. 45; 281–282).

On January 2, 1952, as noted above (*supra,* p. 3), the Board directed that an election be held on January 25, to determine whether or not respondents' employees wished the Union to represent them. On January 15, LeFlore was suddenly discharged without explanation (R. 45; 285). When he requested an explanation from Wally Watkins, Superintendent Rasp's assistant, who had handed him his pay checks and told him he was fired, Watkins informed him that he had merely acted on orders from Rasp (R. 285–286). LeFlore immediately went in search of Rasp but could not find him (R. 286). He then spoke to Osbrink, who denied any knowledge of the discharge and advised him to speak to respondent Berton Beals, the general manager of the plant (R. 46–47; 286). Beals also denied knowledge of the discharge but promised to inquire into the matter and told LeFlore to call him later. Two days later Beals informed LeFlore that LeFlore had been discharged because "he got sand in the molds, because they could not keep track of him on his job, and because his work was unsatisfactory" (R. 47, 20; 486).

Meanwhile, on the day of the discharge, Henry Sandford, a member of LeFlore's shake-out crew, asked Derry Smith why LeFlore had been discharged and Smith replied that he did not know; that LeFlore was a good worker and that he would see Osbrink and try to get him back (R. 46; 260). On the following day Smith told Sandford that he would not try to get LeFlore back because LeFlore had been passing out

Union handbills outside the plant and that he would therefore rather not ask Osbrink to rehire LeFlore as Osbrink was opposed to the Union (R. 46; 263–264). A few days later, Smith told LeFlore and a group gathered at LeFlore's home which included Smith's brother, who was still employed at the plant, that he was sorry about the discharge; that he had done all he could to get LeFlore rehired; but that after it was known that LeFlore had been passing out Union handbills, he could do no more, and that LeFlore would never be taken back (R. 46; 264, 293–294). Ralph Edward Goynes, a member of LeFlore's crew, testified without contradiction that Watkins had told him about a week after the discharge that LeFlore was discharged for talking about the Union (R. 46; 246), and quoted Smith as having said that Watkins had told Smith the same thing (R. 46; 242, 251–252).[7]

In its answer to the complaint, respondents alleged that LeFlore had been discharged because he was "constantly, without permission, wandering through the plant away from his own designated work area without regard and without attending to the duties of his employment, as extremely careless in his work and, moreover, was constantly interrupting molders and fellow foundry helpers to the extent that they protested to the superintendent * * *" (R. 20). In support of this allegation, respondents called Mose Harris, the journeyman under whom LeFlore had

[7] Watkins was not called as a witness although he was in the hearing room (R. 501). Smith, although questioned in respect to other matters, was not questioned in respect to the above statements which stand uncontradicted on the record.

worked for the first 6 weeks of his employment, Christensen, a molder with whom LeFlore had worked for about 3 weeks before Christmas 1951 (R. 40; 420, 426), Titus, an employee in the cleanup department, Derry Smith, in charge of LeFlore's shake-out crew, and assistant superintendent Rasp.

Harris testified that LeFlore was away from his post "about half the time" (R. 40; 442), that he had had to get a substitute for him "three or four times a day" (R. 40; 443) and that he had requested Clary Tarrant (assistant superintendent of the plant at that time) to remove him from the department (R. 40; 443–444, 449).[8] Rasp testified that he had transferred LeFlore in an attempt to "snap him out of it" (R. 43; 353). However, Rasp later admitted that LeFlore was transferred at his own request (R. 43; 353). Rasp testified that a molder, Gonzales, had complained about LeFlore (R. 374–375). LeFlore denied that he knew Gonzalez (R. 306–307). Christensen testified that LeFlore was often away from his job when needed, that LeFlore had boasted that he held the record for having stayed in the restroom for a long period of time (R. 41; 421–422), that LeFlore was generally careless in his work, and that he had asked Rasp for a replacement (R. 41; 417). Christensen admitted on cross examination, however, that he had requested that the whole shake-out crew be replaced (R. 42; 424–426); that he, Christensen, was held responsible for good molds (R. 41; 419); that when anything went wrong he always blamed the trouble on

[8] Harris later denied that he had asked for LeFlore's transfer (R. 451).

LeFlore and Goynes (R. 42; 435–437); and that he knew LeFlore's remark as to the restroom had been said in jest (R. 423).

Titus testified that he had seen LeFlore in the pickling department on one or two occasions talking to the pickling employees for 4 or 5 minutes (R. 40–41; 455–456). Both Smith and Rasp testified that they had observed LeFlore's propensity to wander away from his job (R. 43; 353, 355, 406) but were unable to state whether any of this alleged wandering had occurred near the time of his discharge and could assign no particular act on LeFlore's part as the immediate cause of the discharge (R. 43–44; 376–377, 388, 390, 406–407). Rasp could not remember the names of any employees who had broken plant rules except LeFlore and Plummer (R. 379).

LeFlore testified without contradiction that he was constantly being dispatched to various parts of the plant to secure supplies for the molders (R. 295–296, 494–496, 498) and denied that he left his assigned post without authorization or that he did his work carelessly (R. 495–496, 497). Christensen confirmed the fact that LeFlore was sent to various parts of the building for supplies (R. 427–429). Sandford and Goynes, both members of LeFlore's crew, also denied that he wandered away from his job (R. 236–237, 260, 268). Both considered him a good worker (see also testimony of Ricks, R. 211–212).

Archie Plummer

Archie Plummer was employed in June 1951 (R. 47; 311–312). Plummer was a strong advocate of Union

membership and signed an authorization card as soon as the Union began organizing the plant (R. 48; 313–314). He discussed the advantage of Union membership openly in the plant in the presence of Detroit Rushing and Mose Harris, journeyman furnace attendants under whom he worked (R. 48; 322–323, 318–319). Both Rushing and Harris were opposed to the Union (R. 318). Rasp connected Plummer with the Union activity in the plant at the time of the Board election on January 25, 1952, when he attended the counting of the ballots at the end of the election and saw Plummer serving as an observer for the Union (R. 52; 360–362).

About January 20, 1952, Plummer sprained his back, was under a doctor's care and did not report for work again until February 13 (R. 48; 321). On or about February 25, after he had been back at work for approximately a fortnight, he requested and obtained permission from his leadman Walker to be absent for a day because of a heavy cold (R. 49; 319–320). Watkins, Rasp's assistant, was standing 4 or 5 feet away and Plummer thought that he had overhead the request and Walker's assent.[9] When Plummer returned about noon the following day, Watkins asked him for an explanation of his absence and Plummer told him that he had had permission to be absent from Walker. He asked Watkins if he had

[9] As the Trial Examiner pointed out (R. 49, n. 8) Plummer testified that both Walker and Watkins had granted permission for him to be absent (R. 320, 345–347), but Plummer obviously was referring to the fact that Watkins was standing close by and in what he thought was hearing distance when Walker gave his assent (R. 347).

not heard the conversation of the preceding day. At the end of the day, Watkins handed Plummer a check and told him that he was discharged for being off the job without calling in to report his absence (R. 49; 327).

In its discharge notice and in its answer to the complaint (R. 337, 20), respondents alleged that Plummer was discharged because of "absenteeism and tardiness." However, at the hearing Osbrink denied that employees were discharged in respondent's plant for absenteeism or tardiness alone, stating that these were only two factors which were taken into account with other factors in evaluating an employee's work (R. 165–166). His denial was in effect confirmed by the remarks of Chuck O'Day in the speech which he made at the meeting immediately preceding the election in which he stated, in enumerating the advantages of working for respondents:

> Where also is a shop where the worker can show up for work a day or two out of a week and still retain his job? Some men have consistently violated this privilege, but so far not many have received more than a good bawling out and not so good, but a pretty mild one at that. Where else does a man on the job have a softer time than here, and I know, I've worked back there right in the back, right alongside of you, and I didn't feel like working, I didn't have to put out the production and nobody drove me to put it out. And, a man here is never threatened if he did not put out more work * * * (R. 150–151, 165–166).

Respondents' records on absences for the 8-month period from October 1, 1951 to June 30, 1952, introduced into the record, show that many of respondents' employees were repeatedly absent without authorization during this period.[10]

At the hearing respondents introduced evidence to prove that Plummer was lax and unsatisfactory in the discharge of his duties, and amended its complaint at the end of the hearing to allege this as an additional reason for his discharge (R. 51; 492). In this connection respondents called Mose Harris who testified that when Plummer worked with him as a relief man on the shake-out crew (R. 444) several months before the discharge, he sat around on a box instead of performing his duties (R. 51; 444–445, 447–448). Walker testified that Plummer was absent on two or three occasions when it was time to pour and that he had warned Plummer that one of these days he, Plummer was going to lose his job (R. 51–52; 478). Walker, however, had no power to discharge and there is no evidence that he complained to his superior about Plummer's conduct.

Foundry Superintendent Rasp's statements concerning Plummer's discharge are inconsistent and contradictory. At the outset Rasp testified that he had personally authorized the discharge on the ground that

---

[10] The records show that Derry Smith had 22 absences of which only 11 were authorized; that Robert Ricks, Jr., had 20 absences, only 5 of which were authorized; and that Wiley Larrimore, Jr., had 32 absences of which only 17 were authorized. As compared with these, Plummer had 27 absences of which 16 were authorized. Respondents admitted that a large percentage of Plummer's absences were caused by his back injury (R. 50, n. 9; 230–231).

"Plummer was wandering through the shop and absenteeism and lax in his duties [sic]" (R. 358), and stated that he had personally warned Plummer concerning his absenteeism (R. 359). Later, Rasp stated that not he, but Clary Tarrant, had discharged Plummer and had told Rasp about it (R. 391). Finally, he stated that Tarrant was not working in the plant at the time of the discharge, and that he could not recall discussing the matter with Tarrant (R. 392–393). In still another version, Rasp testified that respondent Berton Beals, plant superintendent, consulted him about the discharge, but then denied that he had any recollection of such an occurrence when pressed for details (R. 396, 397). Rasp also indicated that at the time of the discharge, he was ignorant of Plummer's role as union observer in the election (R. 53; 361) but later admitted on cross-examination that he had known this fact at that time (R. 53; 362). Indeed, on cross-examination Rasp failed to identify Walker and testified that Walker was "one of those absenteeisms" and was no longer employed by respondents (R. 54, n. 10; 381) although Walker was a key man and was still employed at the time of the hearing (R. 54, n. 10; 476–478). None of respondents' witnesses testified as to the specific dereliction of duty on the part of Plummer at or near the time of his discharge.

II. The Board's conclusions

On the basis of the foregoing facts, the Board, like the Trial Examiner, found that the promises of Osbrink made on the eve of the election that he would give the employees financial benefits as an alternative

to their paying union dues, together with the statements and threats of supervisory employees Smith and Watkins that LeFlore had been discharged and would not be rehired because of his union activities, that employee Goynes almost suffered the same fate, and that Osbrink had threatened to close the plant if the Union won the election, constituted violations of Section 8 (a) (1) of the Act (R. 29–30, 36, 77).[1] The Board found further that the discharges of John LeFlore, Jr., and Archie Plummer constituted violations of Section 8 (a) (3) and (1) of the Act (R. 47, 55, 77).

THE BOARD'S ORDER

The Board's order requires respondents to cease and desist from interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed in the Act; from discouraging membership in the Union or in any other labor organization; from threatening that union representation would result in the closing of the plant and in loss of benefits; and from inducing or seeking to induce their employees to oppose the Union by offering or promising benefits (R. 80–81).

Affirmatively, the Board's order requires respondent: to offer to John LeFlore and Archie Plummer immediate and full reinstatement and to make them

[11] The Board also agreed with the Trial Examiner that this conduct warranted the setting aside of the January 25 election (R. 76–77). In this regard, the record showed that respondents had also acted improperly by withholding the employees' pay checks on the day of the election until after they had voted, although under normal practice, the employees would have been paid immediately upon completing their work (R. 78–79, 37–39; 175–180).

whole for any loss of pay they may have suffered by reason of respondent's discrimination against them; to furnish pertinent data for computing back pay; and to post the customary notices (R. 81–82).

SUMMARY OF ARGUMENT

1. Osbrink's promise in his speech on the eve of the election, of financial help to the employees as an alternative to their payment of union dues, together with the statements of supervisory employees that the factory would be closed if the Union came in and that Plummer had been discharged and would not be rehired because of his union activity were properly found by the Board to constitute violations of Section 8 (a) (1) of the Act.

2. Substantial evidence supports the finding of the Board that LeFlore and Plummer were discharged because of their union activity in violation of Section 8 (a) (3) and (1) of the Act.

3. The Board's findings of an independent violation of Section 8 (a) (1) of the Act in the instant case are not barred by the 6-month time limitation of the proviso of Section 10 (b) of the Act. The proviso restricts the complaint to allegations based upon events occurring not more than 6 months prior to the filing of the charge with the Board. This does not mean, however, that the Board is restricted in its formulation of the issues of the case to matters specifically set forth in the charge. It may include therein allegations of unfair labor practices based upon any activities occurring not more than 6 months prior to the filing of the charge, which were dis-

covered in the course of its investigation of the charge. There is no merit in the contention of respondent that activities mentioned for the first time in the complaint must have occurred within 6 months of the issuance of the complaint. The contention, if accepted, would establish wholly different time limitations for the formulations of issues based upon activities mentioned in the charge and upon related or simultaneously occurring activities which happened to be omitted from the charge either through ignorance or lack of skill on the part of the charging party. Such a restriction is nowhere required by the proviso to Section 10 (b) of the Act and would not effectuate the policies of the Act.

4. The Board was not precluded from proceeding in the instant case with its investigation and its Decision and Order against respondents because "Region 6" of the Union, the name of which appears in the charge, had not complied with the filing requirements of Section 9 (f), (g), and (h) of the Act. "Region 6" is not, as contended by respondent, a labor organization subject to the filing requirements of the statute, but merely a geographical administrative district of the International Union. The filing requirements of Section 9 (f), (g), and (h) were applicable to the International Union, not to its "Region 6," and were fully met. The Director of "Region 6," had, in any event filed an affidavit in compliance with the requirements of the statute in his capacity as an officer of the International.

ARGUMENT

A. The Board properly found that portions of the speech delivered to the employees on the eve of the election together with statements made to the employees by respondents' supervisory employees constituted violations of Section 8 (a) (1) of the Act

The evidence detailed above amply supports the finding of the Board that respondents threatened their employees with reprisals if they joined the Union and promised them benefits if they did not permit the Union in the plant (pp. 4–5). During the Union campaign after the Board had issued its direction of election, Derry Smith called shake-out crews working under him away from their work to tell them that he had heard Osbrink say that the plant would be closed if the Union won the election (*supra,* p. 4). Midway in the organizational campaign, Smith and Watkins, of respondent's supervisory staff, let it be known that LeFlore had been discharged because he had talked too much about the Union; Smith told Goynes, a fellow member of LeFlore's crew, that Goynes, too, had been slated for discharge because of his Union activity, intimated that he had been saved only because of Smith's intervention, and told him that LeFlore had been seen distributing Union pamphlets and would never be reinstated. During the afternoon before the election, Osbrink promised the employees financial benefits in return for the defeat of the Union by offering to match any funds which the employees might raise for sick relief, entertainment or kindred purposes as an alternative to paying union

dues (*supra,* pp. 4–5). These activities constitute well recognized forms of interference, coercion, and restraint within the meaning of Section 8 (a) (1) of the Act.[12]

Respondents resist the finding of the Board in respect to the remarks of Derry Smith on the ground that Derry Smith was not a supervisory employee and could not, therefore, render respondents liable for his remarks. The record, however, shows that Smith possessed supervisory authority. According to Rasp, superintendent of the foundry, Smith was "completely over" respondents' shake-out crews, which comprised 20 or 30 men and which were located at 4 different spots in the foundry (R. 34; 374–375, 386). Newly hired men, on being assigned to shake-out work, were instructed by Rasp to take orders from Smith. Smith directed the training of these employees, placing them with experienced workers, and transferring them from one crew to another on his own initiative. Thus, when Smith's brother was first employed, Smith placed him with LeFlore, telling him that LeFlore was a good worker and could show him what to do (*supra,* pp. 6–7). Smith spent about half his time going from crew to crew to instruct and to supervise (R. 35; 225, 259, 275). Five of the shake-out men who testified at the hearing stated that they considered Smith to be

---

[12] Threat to close plant: *N. L. R. B.* v. *J. G. Boswell Co.*, 136 F. 2d 858, 590 (C. A. 9). Promise of benefits: *N. L. R. B.* v. *Medo Photo Co.*, 321 U. S. 678, 686; *Joy Silk Mills* v. *N. L. R. B.*, 185 F. 2d 732, 739 (C. A. D. C.), certiorari denied, 341 U. S. 914; *N. L. R. B.* v. *Kropp Forge Co.*, 178 F. 2d 822, 828 (C. A. 7), certiorari denied, 340 U. S. 810; *N. L. R. B.* v. *Swan Fastener Corp.*, 199 F. 2d 935, 937–938 (C. A. 1).

their "boss." (R. 193, 223, 234, 257, 272). Rasp received complaints from Smith concerning employees in the shake-out department and asked or consulted Smith in the matter of wage increases (R. 34; 387). Under these circumstances, the Trial Examiner and the Board were wholly justified in holding that Smith was properly to be identified with management and that the employees would reasonably make such identification, particularly when Smith purported to express the viewpoint of management. *International Association of Machinists* v. *N. L. R. B.*, 311 U. S. 72, 80–81; Cf. *H. J. Heinz Co.* v. *N. L. R. B.*, 311 U. S. 514, 520; *N. L. R. B.* v. *Link Belt Co.*, 311 U. S. 584, 598–599; *N. L. R. B.* v. *Germain Seed & Plant Co.*, 134 F. 2d 94, 96–97 (C. A. 9); *N. L. R. B.* v. *Laister-Kauffmann Aircraft Corp.*, 144 F. 2d 9, 15 (C. A. 8); *N. L. R. B.* v. *Engineering and Research Corp.*, 145 F. 2d 271, 272 (C. A. 4), certiorari denied, 323 U. S. 801.

B. The Board properly found that LeFlore and Plummer were discharged because of union activity in violation of Section 8 (a) (3) and (1) of the Act

The facts summarized above amply support the finding of the Board that respondents discriminated against John LeFlore, Jr., and Archie Plummer in violation of Section 8 (a) (3) and (1) of the Act.

Respondents' hostility to the Union was well known in the plant; rumors had been current since October that the plant would be closed if the Union came in. Despite this hostility LeFlore had, almost from the day he was employed, vigorously and openly advocated Union membership to every employee with whom he

came into contact (*supra,* pp. 7–8). When the Union embarked upon a campaign to unionize the plant in the late fall of 1950, LeFlore had been its most active supporter at the plant, and had, of his volition, collected and submitted to the Union names and addresses of potential Union members among his fellow employees (*supra,* pp. 7–8).

The Union campaign was intensified and reached its height between the issuance of the Board's direction of election January 2, 1952, and the election itself on January 25. Definite steps were taken by respondents during this period to insure the defeat of the Union. The first of these was the discharge of LeFlore. This action was taken at the direction of Rasp, the foundry superintendent, without either notice to or consultation with LeFlore's immediate superior, Derry Smith. Smith, who considered LeFlore a good worker, told Goynes, one of LeFlore's fellow crew members, the day after the discharge that he would try to get LeFlore back again, but a few days later, both Watkins, Rasp's assistant who had handed LeFlore his discharge slip, and Smith told Goynes that LeFlore had been discharged because he talked too much about the Union, (*supra,* p. 9). A week after the discharge Smith told LeFlore, in the presence of other employees that he had wanted to ask for LeFlore's reinstatement, but was unwilling to do this after LeFlore had been seen handing out Union literature outside the plant and predicted that LeFlore would never be reemployed (*supra,* pp. 8–9).

Archie Plummer also talked in favor of the Union before the election (*supra,* pp. 11–12). He injured his back in December, however, and was not in the plant just before the election. Rasp identified him as a prominent Union member when he saw him serving as a Union observer at the counting of the ballots on the day of the election, January 25, 1952 (*supra,* p. 12). When he returned to the plant on February 13, he continued to talk about the Union, even though the Union had lost the election. A fortnight later he was discharged purportedly for "absenteeism and tardiness" after he had been absent, with permission from his foreman, for a few days to visit his doctor. The record showed, however, that many employees indulged in unexcused absences and respondents frankly admitted that employees in his plant were not customarily discharged for either absenteeism or tardiness (*supra,* p. 13). These facts alone would warrant the conclusion that the discharge of both LeFlore and Plummer were motivated by a desire to get rid, before the election, of the most vigorous leader of the Union activity in the plant, and after the election, of an employee identified by respondent as a prominent Union member, who continued to discuss the Union even after the Union's defeat.

The Board's findings of discrimination are further supported by "the fact that the explanation[s] of the discharge[s] offered by the respondent did not stand up under scrutiny." *N. L. R. B.* v. *Bird Machine Co.,* 161 F. 2d 589, 592 (C. A. 1). Respondents admitted that they could point to no specific instance of faulty work or misconduct on the part of LeFlore on or near

the date of the discharge as the cause of the discharge. They relied, rather, upon a general allegation, appearing in the answer to the Board's complaint (R. 20), that LeFlore constantly wandered about the plant outside his designated work area. To support this allegation respondent depended in great part on the testimony of Mose Harris, a furnace tender under whom LeFlore worked for the first few weeks of his employment. Harris stated that LeFlore would be absent from his post, necessitating the securing of a substitute "three or four times a day" and Rasp, respondents' foundry superintendent, testified that he transferred LeFlore into another department in order to "snap him out of" this fault. Rasp admitted upon questioning, however, that LeFlore was transferred at his own request (*supra,* p. 10). If Harris had in fact to seek constantly for a substitute to do LeFlore's work, it is incredible, as the Trial Examiner pointed out (R. 40), that LeFlore, an employee who was scarcely more than a common laborer, would have been transferred to another department at his own request and would thereafter have been retained in respondents' employment. Respondent also sought support in the testimony of Christensen, a molder without journeyman status to whom LeFlore, as a member of a 3-man shake-out crew had supplied materials and shaken out castings for a few weeks before Christmas 1951, and who stated that LeFlore was careless in his work and wandered about the plant (*supra,* p. 10). However, Christensen was displeased with the entire crew, and asked that the entire crew, not just LeFlore, be replaced (*supra,* p. 10). There is evidence, moreover,

that his displeasure may have had a personal basis: he admitted that when anything went wrong with the castings, for which normally he was held responsible, he blamed LeFlore and his crewmate Goynes. Christensen also related that he had heard LeFlore boast that he LeFlore had the record for staying in the restroom, but admitted on cross examination that he knew that LeFlore had made this remark in jest.

Finally, there is no evidence that respondent considered Christensen's complaints to have any substance at the time they were allegedly made. Derry Smith testified that LeFlore would leave his floor during working hours and that he called this to LeFlore's attention (*supra,* p. 11). However, there is no evidence that this matter was ever called to the attention of Rasp or that his warning provided the basis for LeFlore's discharge. Smith did not deny that he placed his brother under LeFlore to train, that he had told LeFlore upon one occasion that if all the employees in the department were as good as LeFlore there would be very little to worry about, that he had spoken of LeFlore's excellence to at least one other employee, or that he was at first at a loss to explain LeFlore's discharge and had told employee Goynes that he intended to ask for his recall. Rasp, who discharged LeFlore testified that he had observed LeFlore away from the job and had spoken to him about it. However, since his testimony that he had transferred LeFlore to the shake-up department because of this fault was admittedly not correct, and since he admittedly could point to no specific dereliction on the

part of LeFlore at or near the time of the discharge, the Trial Examiner and the Board were fully warranted in not considering his testimony as of controlling weight.

Respondents' asserted reason for the discharge of Plummer likewise failed to stand up under scrutiny. Respondents asserted in the answer to the complaint (R. 20) that Plummer had been discharged because of "absenteeism and tardiness" and cited the single instance of the morning of February 23, when Plummer was absent a few hours in the morning to visit his doctor. At the hearing respondent spoke not only of the morning of February 23, but also of previous absences. However, it appears clearly in the record that respondents did not have a policy of dismissing employees for being absent. Chuck O'Day, a managerial representative, in his speech on the eve of the election, asked the employees where they could find a shop where "the worker can show up for work a day or two out of a week and still retain his job" and pointed out that "some men have constantly violated this privilege, but so far not many have received more than a good bawling out" (*supra,* p. 13). Osbrink specifically admitted that it was not respondents' policy to discharge for absence (*supra,* p. 13) and the company records show that numerous employees had many unexcused absences noted on their records (*supra,* p. 14, n. 10). Indeed, Plummer had fewer than many other employees and the bulk of those recorded in Plummer's case occurred during his illness (*supra,* p. 10). Moreover, there is no evidence that respondent was disturbed over any of Plummer's absences

at the time of his return to the plant on February 13. Under these circumstances, the assertion that he was discharged for an absence of a few hours on February 28, for which he had obtained his leadman's permission, is not worthy of credence.

At the hearing, respondents alleged that Plummer was also discharged because he was "lax and unsatisfactory in the performance of his duties." It introduced in support of this allegation the testimony of Mose Harris, who stated that when Plummer worked for him, he sat around on a box when he should have been working; the testimony of Walker, who stated that Plummer was absent 2 or 3 times when needed; and the testimony of Rasp to the effect that Plummer "never got in the pitch" with the other boys and gave the appearance of not wanting to work. The Trial Examiner who had an opportunity to observe the witnesses, discredited the testimony of Harris and pointed out that in any event Plummer had not worked with Harris for months before his discharge. An employer's reliance for the discharge of an employee upon events occurring in the past and not then thought to merit discharge can properly be uniformly discounted in determining the true motive for the discharge. *N. L. R. B.* v. *Whitin Machine Works,* 204 F. 2d 883, 885 (C. A. 1); *N. L. R. B.* v. *J. G. Boswell Co.,* 136 F. 2d 585, 595 (C. A. 9); *N. L. R. B.* v. *Arcade Sunshine Co.,* 118 F. 2d 499, 451 (C. A. D. C.), certiorari denied, 313 U. S. 567; *Peoples Motor Express, Inc.* v. *N. L. R. B.,* 165 F. 2d 903, 906 (C. A. 4); *N. L. R. B.* v. *Eclipse Molded Products Co.,* 126 F. 2d 576, 581 (Erickson) (C. A. 7). There is no evidence that

Walker ever complained to his superior about Plummer; and the testimony of Rasp in respect to whether he did in fact order the discharge, or whether he had anything to do with it whatsoever, set forth in some detail in the Intermediate Report (R. 52–55), is so contradictory as to wholly destroy Rasp's credibility in respect to the discharge.

Under these circumstances the Board was wholly justified in finding that the discharges of both LeFlore and Plummer were motivated by knowledge of the Union activity of these employees and a determination to discourage such activity in the plant. Discharges so motivated violate Section 8 (a) (3) and (1) of the Act.

C. The Board's findings of violation of Section 8 (a) (1) of the Act are not barred by the six months time limitation provisions of Section 10 (b) of the Act

Section 10 (b) of the Act provides that the Board may issue a complaint "whenever it is charged that any person has committed an unfair labor practice." A proviso to this Section, added by the Taft-Hartley Act, provides that:

> No complaint shall issue based upon any unfair labor practice occurring more than 6 months prior to the filing and service of the charge * * *

All the activities of respondents which the Board found to constitute unfair labor practices in the instant case occurred within 6 months of the filing of the charge and therefore are within the literal limitation period established by the proviso.

Respondents contend, however, that the Board is precluded by this section of the Act from making any findings in respect to independent violations of Section 8 (a) (1) of the Act because (a) the charge filed by the Union did not specifically allege such independent violations,[13] and (b) the complaint, in which the independent violations of Section 8 (a) (1) were first alleged[14] was not filed until more than 6 months after the alleged violations occurred. We maintain that this position is untenable. *N. L. R. B.* v. *Martin,* 207 F. 2d 655, 656–657 (C. A. 9).

The claim that the charge must set forth with specificity the precise violations alleged in the complaint is baseless. It is well settled that the charge in an unfair labor case "merely sets in motion the machinery of an inquiry * * * it does not even serve the purpose of a pleading," *N. L. R. B.* v. *Indiana & Michigan Electric Co.,* 318 U. S. 918. The issues in the case are formulated not in the charge, which may be filed by any one,[5] but in the complaint, on the basis of the investigation which the charge initiated. It has long been recognized by this Court and by the ma-

[13] The original charge filed on January 16, 1952, alleged the violation of Section 8 (a) (3) and (1) by the discharge of John LeFlore, Jr., and Benny Pratt. The charge was amended on January 21, 1952, to include the name of Leroy Jones, and on March 3, 1952, to include the name of Archie Plummer.

[14] Paragraphs 4 and 7 of the complaint (R. 16, 17) allege that certain activities of respondent interfered with, restrained and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act, thus violating Section 8 (a) (1) of the Act.

[15] As the Court of Appeals for the Tenth Circuit observed in *Kansas Milling Co.* v. *N. L. R. B.*, 185 F. 2d 413, 415, "anyone can file a charge. Many are filed by private citizens unskilled in the law or art of pleading."

jority of other circuit courts that a complaint issued under the amended Act is not limited in scope by the averments of the charge provided that the violations included in the complaint did not occur prior to the 6-month period of limitations established by the proviso. The *Martin* case, *supra; N. L. R. B.* v. *Globe Wireless, Ltd.,* 193 F. 2d 748, 752 (C. A. 9); *N. L. R. B.* v. *Dinion Coil Co.,* 201 F. 2d 484, 491 (C. A. 2); *Stokely Foods, Inc.* v. *N. L. R. B.,* 193 F. 2d 736, 737–738 (C. A. 5); *N. L. R. B.* v. *Bradley Washfountain Co.,* 192 F. 2d 144, 149 (C. A. 7); *Cusano* v. *N. L. R. B.,* 190 F. 2d 898, 903–904 (C. A. 3); *N. L. R. B.* v. *Kobritz,* 193 F. 2d 8 14–16 (C. A. 1); *N. L. R. B.* v. *Cathey Lumber Co.,* 185 F. 2d 1021 (C. A. 5), affirming, *Cathey Lumber Co.,* 86 N. L. R. B. 157, 158–163 (vacated on grounds not here pertinent 189 F. 2d 428); *N. L. R. B.* v. *Westex Boot and Shoe Co.,* 190 F. 2d 12, 13 (C. A. 5); *Kansas Milling Co.* v. *N. L. R. B.,* 185 F. 2d 413, 415 (C. A. 10); *Consumers Power Co.* v. *N. L. R. B.,* 113 F. 2d 38, 41–42 (C. A. 6); *Katz, et al.* v. *N. L. R. B.,* 196 F. 2d 411, 415 (C. A. 9); *N. L. R. B.* v. *Radio Officers,* affirmed by the Supreme Court, February 1, 1954, sl. op., p. 14, n. 30.

Analysis of these cases reveals that in several instances the complaint named discriminatees or dischargees in addition to those originally named in the charge (*Cathey Lumber, Dinion Coil, Kansas Milling, U. S. Gypsum, Consumers' Power*); in other instances the complaint added activities related to the unfair labor practices charged (*Gaynor News, Westex Boot*); and in still other instances the complaint added unfair labor practices not mentioned in the charge

(*Bradley Washfountain, Stokely Foods, Kobritz*). Clearly, then, absence of detailed allegations in the charge is not a necessary prerequisite to the validity of complaint provisions.

But respondents contend that since the independent Section 8 (a) (1) violations were first alleged in the complaint, they must have occurred within 6 months of the issuance of the complaint or be barred by the proviso. This contention is also, we submit, untenable.[16] The proviso speaks specifically and explicitly in terms of the date of the filing of the *charge,* prohibiting the issuance of a complaint based upon "an unfair labor practice occurring more than 6 months *prior to the filing of the charge* with the Board * * *" [Emphasis added.] Since there is no requirement that the complaint be issued within 6 months of the practice alleged in the charge, respondents' interpretation of the proviso would in fact necessitate the establishment of two time tables—one for practices alleged in the charge and one for

[16] Respondents apparently rely in this regard on the *Globe Wireless* case. We believe that reliance is misplaced. In *Globe Wireless*, as here, the complaint alleged independent violations of Section 8 (a) (1) not specifically alleged in the charge. This Court rejected as without basis the view that the complaint was limited to the averments of the charge, but disposed of the case on the narrow ground that the complaint itself issued within 6 months of the violations in question. Because of this unique circumstance, the Court did not have to pass on the issue here presented, namely whether a timely charge, even though not couched in precise and specific terms, supports specific allegations in a subsequent complaint issued after the 6-month limitations period. For reasons here set forth, we submit that the Board's view, supported almost uniformly by the courts, is correct. See the *Martin* case, *supra.*

practices occurring simultaneously with or later than those alleged in the charge, which were discovered by the Board in the investigation initiated by the charge but omitted from the charge either through ignorance or lack of skill on the part of the charging party. Such a result is clearly not sanctioned by the Act, which has nowhere established a time relationship between either the commission of the unfair practices or the filing of the charge and the Board's final formulation of the issues of the case in the complaint. A rule which precluded the Board from including in the complaint unfair practices unearthed during its investigation occurring more than 6 months before the issuance of the complaint but within 6 months of the filing of the charge, would fail to effectuate the purposes of the Act. "In considering the sufficiency of the complaint in * * * respect [to the unfair practices alleged] it is necessary to bear in mind that the nature of the proceeding is not punitive but preventative and in the interests of the general public" *Consumers Power Co.* v. *N. L. R. B.,* 113 F. 2d 38, 42 (C. A. 6).

The activities alleged in paragraph 4 of the complaint as independent violations of Section 8 (a) (1) of the Act in the instant case all arose either in connection with the discharge of Plummer on January 16, 1952 (named in the charge), or in connection with the organizing campaign which was being conducted in the plant at the time of the discharge and which culminated in the election conducted by the Board on January 25. Those violations of Section 8 (a) (1) of the Act which occurred in con-

nection with the discharge of Plummer, consisting of remarks by supervisory employees Smith and Watson to the effect that Plummer had been discharged and would not be reemployed because of his union activity, together with the implied threat to employee Goynes that the same fate might await him, could well have been proven under the 8 (a) (3) allegation of the complaint. Allegations of these activities as independent violations of Section 8 (a) (1) represented only at best a slight but permissible change of legal theory. See the *Martin* case, *supra; Cusano* v. *N. L. R. B.,* 190 F. 2d 898, 903–904 (C. A. 3). See also *N. L. R. B.* v. *Syracuse Stamping Co.,* 208 F. 2d 77, 78 (C. A. 2).

The remaining violations of Section 8 (a) (1) found by the Board occurred during the campaign preceding the election of January 25 and consisted of threats made by respondents' supervisory employees that the plant would be closed and that the employees would be deprived of benefits if the Union won the election, and promises by Osbrink in his speech of January 24 of financial aid as an alternative to the payment by the employees of union dues. Respondents were aware as early as February 1, 1953, a few days after the election, that their preelection conduct had been made the subject of Union protest in the Union's Objections to the Conduct of the Election, filed with the Board, and that the Board was undertaking an investigation. Indeed, the threat to close the plant had been specifically listed as one of the Union's objections, and was denied by respondents in their answer to the Objec-

tions filed on March 7, 1952. On July 25, 1952 when the Regional Director issued his complaint, he included in the allegations of independent violations of Section 8 (a) (1) of the Act certain of respondents' activities first complained of in the Objections to the Conduct of the Election, certain other activities connected with the election but not mentioned in the objections, which he had discovered in his investigation of the objections, and certain activities in connection with the discharge of Plummer. All these activities occurred within 6 months of the filing of the charge. Respondent cannot, under the circumstances claim that they were surprised at their inclusion in the allegations of the complaint of the consolidated case. In any event, the complaint fully informed respondents in detail of the issues of fact to be tried, respondents answered denying the allegations of the complaint, and the issues were fully litigated at the hearing.

It is submitted that the enlargement of the complaint in the instant case by the inclusion therein of an allegation that certain activities occurring within 6 months of the filing of the charge initiating the case constituted violations of Section 8 (a) (1) is wholly permissible.

D. Region 6 of the United Automobile Workers, CIO, is not an independent labor organization and the filing requirements of Section 9 (f) (g) and (h) are inapplicable to it

The original unfair labor practice charges in this case were filed by International Union United Automobile, Aircraft and Agricultural Implement Workers

of America, CIO, Region 6. Throughout the proceedings, whenever reference was made to the charging union, the designation of the Union followed the description in the charge.[17] Upon the issuance of the Decision and Order of the Board respondents filed a Motion for Reconsideration, Motion for Rehearing, and Motion to Dismiss on the ground, *inter alia,* that "Region 6" of the Union had not complied with the requirements of the Act set forth in Section 9 (f), (g), and (h) and that all the proceedings in the case from the issuance of the complaint through the issuance of the Board's Decision and Order were "beyond the power and authority of the Board" (R. 85). Thereupon the Board issued a Supplemental Decision and Order in which it found that "Region 6" was merely a geographical district of the Union, not an independent labor organization, and "in order to avoid any further ambiguity," amended its Decision and Order to avoid all mention of "Region 6" (R. 103). Respondent is nevertheless repeating its contention with respect to "Region 6" before this Court, and takes the position that the Board was without jurisdiction to proceed in the case by reason of the failure of "Region 6" to comply with the filing requirements of the statute (R. 116).

The position taken by the Board, we submit, is manifestly correct. According to the constitution of the UAW–CIO, each region represents a geographical area from which local unions within the area select an

[17] The caption in the representation case, with which the unfair labor practice case was consolidated, omitted any reference to "Region 6" (R. 1).

International Executive Board Member, who also serves as the regional director for that region. "Region 6" covers the States of Washington, Oregon, California, Idaho, Nevada, Utah, and Arizona (R. 102).[18]

The regional director serves as the *administrative officer for his region under the general supervision of the International President.* He exercises direct supervision over organizational activities within his region. Article 13, Section 28 of the constitution provides that he "shall examine all contracts negotiated within his region before they are signed and submit them to the International Executive Board with his recommendation, negotiate disputes with the bargaining committees whenever possible, act to obtain favorable legislation for labor and work for the general welfare of the membership" (R. 120). Section 29 of Article 13 provides that he shall attend meetings of district councils within his region, if any exist, "when possible and work in cooperation with such councils; that he shall submit quarterly reports of organizational activity within his region to the International President and to the International Board for its approval. Article 49, Section 2 provides that he

[18] The Board took official notice of the provisions of the constitution of the UAW–CIO which respondents attached as an appendix to their brief before the Board. The pertinent provisions of the constitution are presently before this Court in *N. L. R. B.* v. *Grand Central Aircraft Co., Inc.*, No. 14010, in which the respondent there raised the same issue in respect to "Region 6" as is raised in the instant case. The provisions of the constitution here relied upon are set forth at pp. 925–931 of Volume II of the record in that case.

shall also transmit strike action voted by the local union with his recommendation, for the approval or disapproval of the National Executive Board (R. 102).

The regions do not have separate constitutions or bylaws. They do not, as such, collect dues. The regional director is the only elected officer in the region. His salaries and duties are prescribed by the constitution of the International Union and it is clear that he serves in his capacity as the regional director merely as an *administrative officer* of the International Union (R. 102–103). There is no evidence in the record to sustain respondent's contention that "Region 6" or any of the other regions into which the International Union is divided, is a separate labor organization. In view of this fact, it was not necessary for "Region 6" or any of the other geographical regions of the union to be in compliance with Section 9 (f) (g) and (h) of the Act. The *International Union* has complied with the requirements of the Section and the regional director has filed a non-Communist affidavit required by the Section in his capacity as a member of the International Executive Board of the International Union (R. 103).

Obviously, therefore the "Region" is merely the device of a nationwide union to provide the flexibility necessary to meet local conditions in each geographical area, and the International Executive Board member is the instrumentality employed by the International Union to accomplish this purpose. We submit that the insubstantial nature of respondents' contention is plainly established. As in all such cases where it is suggested that an individual or union seeks to circum-

vent the filing requirements of Section 9 (h) of the Act, the Board acts "so as to preclude even the possibility of such result."[19] In the instant case investigation reveals that the "union," which allegedly attempted to circumvent Section 9 (h), was merely an administrative arm of a union in full compliance with all the requirements of the Act. See *N. L. R. B.* v. *S. H. Kress & Co.,* 194 F. 2d 444 (C. A. 6).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Board's findings, conclusions and order are valid and proper and that a decree should issue enforcing the order in full.

GEORGE J. BOTT,
General Counsel,
DAVID P. FINDLING,
Associate General Counsel,
A. NORMAN SOMERS,
Assistant General Counsel,
ARNOLD ORDMAN,
MARGARET M. FARMER,
Attorneys,
National Labor Relations Board.

MARCH 1954.

---

[19] Board's Fourteenth Annual Report (1949), p. 16; Board's Fifteenth Annual Report (1950), p. 22.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. V, Secs. 151, *et seq.*), are as follows:

Rights of Employees

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

Unfair Labor Practices

Sec. 8. (a) It shall be an unfair labor practice for employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: * * *

* * * * *

Prevention of Unfair Labor Practices

Sec. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice

(listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise: * * *

(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testi-

mony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. * * *

* * * * *

U. S. GOVERNMENT PRINTING OFFICE: 1954